

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.2839 & 6852/Del/2017
Assessment Years: 2010-11 & 2012-13

Shri Deepak Singh Rawat, C/o Sudhanshu Sharma & Associates, Saket, Near Jamuna Palace, Opposite Vodafone Store, Hardwar, Uttarakhand	Vs.	Income Tax Officer, Kotdwar
PAN :ALRPR4415Q		
(Appellant)		(Respondent)

Assessee by	Shri Sudhanshu Sharma, CA
Department by	Shri B.S. Rajpurohit, Sr.DR

Date of hearing	05.12.2018
Date of pronouncement	21.12.2018

ORDER

PER O.P. KANT, A.M.:

These two appeals by the assessee are directed against two separate orders dated 03/02/2017 and 07/08/2017 passed by the Commissioner of Income Tax(Appeals), Dehradun and the Commissioner of Income-tax (Appeals), Haldwani for assessment years 2010-11 and 2012-13 respectively. As both the appeals are related to same assessee and facts and circumstances being same, these appeals were heard together and disposed off by way of this

consolidated order for convenience and arrived repetition of discussion.

2. The grounds of the appeal raised in ITA No. 2839/Del/2017 for assessment year 2010-11 are reproduced as under:

1. BECAUSE ON FACTS AND IN CIRCUMSTANCES OF THE CASE, THE CIT (A) DEHRADUN HAS ERRED IN CONFIRMING THE ADDITION OF Rs 7,29,289,00 IN THE HANDS OF THE ASSESSEE ALTHOUGH THE SAME INCOME WAS ALSO ASSESSED TO THE INCOME OF ANOTHER ASSESSEE - SH. INDER SINGH/SH. BETAL SINGH, AS HAS ALSO BEEN CONFIRMED BY THE AO.

2. BECAUSE ON FACTS AND IN CIRCUMSTANCES OF THE CASE, THE CIT (A) DEHRADUN HAS ERRED IN TREATING THE RECEIPTS OF Rs 12,00,000.00 AS RELATING TO LIQUOR BUSINESS, ALTHOUGH THE SAME PERTAIN TO CONTRACT BUSINESS, AND THUS NOT ALLOWING THE BENEFIT PRESUMPTIVE INCOME U/S 44AD

3. BECAUSE ON FACTS AND IN CIRCUMSTANCES OF THE CASE, THE CIT (A) DEHRADUN HAS ERRED BY NOT APPRECIATING THE SUBMISSIONS MADE BY THE ASSESSEE AS WELL AS BRUSHING ASIDE THE VARIOUS COURT PRONOUNCEMENTS & MATERIAL MADE AVAILABLE TO HIM.

4. THAT THE ASSESEE RESERVES THE RIGHT TO INTRODUCE ANY OTHER GROUND OF APPEAL AND NEW FACTS WITH THE KIND PERMISSION OF YOUR HONOURS

3. At the outset, we may like to mention that the department representative submitted that cross appeal filed by the Revenue in the year under consideration was required to be consolidated along with this appeal. However on verification, we found that said appeal bearing ITA No. 2886/Del/2017 stands already dismissed by the ITAT (in short 'the Tribunal') vide order dated 29/08/2018 on account of tax effect being less than the prescribed limit for

filing appeal to the Tribunal. Accordingly, the parties were heard on the grounds raised in this appeal only.

4. The briefly stated facts of the case are that in the case of the assessee on the basis of the Annual Information Return (AIR), deposit of Rs.1,23,45,680/- was found in the saving bank accounts maintained by the assessee. The assessee was asked to explain the source of said deposit by way of the letter issued, however, no compliance was made by the assessee. The Assessing Officer initiated proceeding under section 147 of the Income-tax Act, 1961 (in short 'the Act') and issued a notice under section 148 of the Act on 09/07/2013 asking the assessee to file the return of income for the year under consideration. In response, the assessee filed return of income on 17/04/2014 declaring income of Rs.1,73,328/- from business, salary and other sources. The assessee declared gross receipt of Rs.11,90,257/-from petty construction work and shown net profit of Rs.95,268/- under section 44AD of the Act from the said activity. The Assessing Officer found cash deposits of Rs.85,50,480/-in saving account maintained with state bank of India, cash deposits of Rs.39,85,200/- in saving bank account maintained with the ICICI bank limited and cash deposit of Rs. 12 lakhs in saving bank account maintained with the Allahabad bank. It was explained by the assessee that the cash deposited belong to the business of Mr. Inder Singh and Mr. Betal Singh, who were the liquor shop owners, but had utilized the services of the assessee as an agent and the business proceeds of those persons were credited in bank

accounts of the assessee. During the course of the assessment proceeding, the assessee was asked to produce Sh. Inder Singh and Sh. Betal Singh, but the assessee failed to do so. The Assessing Officer issued summons to those persons, but no compliance was made by them.

5. With respect to Sh. Inder Singh, audited final account was filed which shown total sales at Rs.1,27,43,732/-, however, no return of income was filed. At the fag end, of the assessment proceedings, the assessee produced Sh. Inder Singh and his statement was recorded. Sh. Inder Singh confirmed that the assessee was appointed as agent but he (Inder Singh) had no knowledge of the business or the people employed for running the business, no knowledge of turnover or accounts or the chartered accountant. He even stated that he was no knowledge with regard to amount of the sales and purchases or excise duty paid. His standard response was that all records were with the assessee and this assessee was only knowing about the business. Sh. Inder Singh admitted that he did not run the liquor business and the entire operations were managed by the assessee, for which at the closing of the year, he was paid approximately Rs. 2.5 lakhs and therefore he did not file return of income and return of income was filed if any, then it would be known to the assessee only.

6. With regard to Sh. Betal Singh, it was submitted that, he was very old and could not attend. The Income Tax details of Sh. Betal Singh were found and according to which, total sales of Sh. Betal Singh was of Rs.8,38,32,493/-

. A copy of return of income was also filed according to which total income of Rs.15,98,590/-was declared.

7. The assessee contended that the first two accounts, i.e., State Bank of India and ICICI Bank Limited were on account of receipt arising from liquor vending business while the third account, i.e., Allahabad Bank was maintained for receipt from business of civil contract activity

8. The Ld. CIT(A) has summarized the finding of the Assessing Officer in para 6 to 8 of the impugned order. For ready reference, said summary of the finding of the Assessing Officer is reproduced as under:

“6. From the facts of the case and statement of Sh. Inder Singh, the AO concluded that it was the assessee who had run the said business. He also pointed out that the explanation that the case deposit in the bank account represents day to day receipt of the wine shop did not appear to be backed up by the evidence on the following counts:-

- 1. There was a balance of Rs.26,52,000/- at the closing of the year which was unexplained. There was no liability in the return/balance sheet of any of the liquor shop owner which made it clear that no such payment was to be made by any liquor licensee.*
- 2. Some accounts were opened at the fag end of the year, could not be said to be used for regular liquor business.*
- 3. With regard to SBI account, the assessee was unable to furnish explanation of cash deposits and withdrawals.*

7. On account of these factors, the AO concluded that it was clear that the income was that of the assessee himself. Sh. Inder Singh had clearly stated that he was unaware of the books of account as the assessee maintained and kept the accounts. Further, Sh. Inder Singh & Sh. Beta Singh showed income of Rs 5 lakhs & Rs. 16 lakhs only while there was more than 26.52.000/- balance at the end of the year in the single ICICI account. He held that the fact that liquor shop owners filed their return did not prove that assessee did not have unaccounted income. He held that huge balances at the end of the year and heavy withdrawals at the end could not have gone to original liquor licensee. One of the shop owners had indicated that much less income had been given to him and he

was not aware of income/turnover or even of his income tax return. The AO therefore concluded that the assessee was the real earner and managed everything behind the scenes and now was making excuses that he was not the owner and not supplying the information. He also found that the so called returns of liquor licensee were managed in the sense that best combination and permutation was used to minimize the tax liability of these persons. He further noted that the assessee did not produce any books of account relating to this business. In the absence of any clarification of withdrawals/expenses, the AO came to the conclusion that the deposits and withdrawals during the year from the bank account of Sh. Deepak Singh could not be correlated with the sales and purchase of liquor and government fees. Since the assessee had failed to give the details of the transactions made on behalf of the original licensee and since there was balance in ICICI bank at closing of the year which disproves the claim that the amount belongs to the original licensee. The AO held that the entire amount deposited in the bank account was the income of Sh. Deepak Singh himself. He pointed out that assessee owed further explanation as to which other accounts were used to do the business of Rs. 9.5 crores (which was the company figures on account of turnover of Sh. Inder Singh & Sh. Betal Singh).

8. According to Allahabad Bank account, the AO observed that the assessee submitted affidavits from Sh. Lalit Negi, Sh. Sharvan Kumar and Sh. Prakash Rawat that it done work on the construction of house and he produced these persons for the statement, rurtner, when the AO attempted to verity these intormation, no information could be provided regarding the date, mode and source of payment. The AO observed that none of tho nerson were tax-oaver No evidence was submitted of house/construction except the joint Khasra/Khatauni. None of the payments were made through banking channels. There was no agreement between the parties with relation to construction. Further, the AO noted that the IT! of his office who was deputed to enquire in the case, after spot enquiry found that Sh. Lalit Negi did not own any land and his father was one of the owners in the Joint property. Some repair had been done to that joint property nearly 4-5 years back. Thus, the payment made by Sh. Lalit Negi of Rs. 3,30,000/- stood disprove. Similarly, Sh. Prakash Rawat was found to be owner of joint property owned by 7 owners. In this case, some work had been done 7 to 8 years back which contradicted the payment of Rs. 9,80,000/- by Sh. Prakash Rawat in F.Y.2009-10. Thus, in view the AO, the entire story was cooked up. Furthermore, the AO noted that the Allahabad Bank account was used for petty contract work but payments had been made to M/s Jagjeet Industries Ltd on 3/10/2009 amounting to Rs. 2,00,662/-.

Thus, he found that the story of assessee doing petty contract was not corroborated and witnesses produced by the assessee were unreliable.

In view of the aforesaid reasoning, the AO added back the entire deposit in these 3 bank accounts amounting to Rs. 1,37,35,680/- to the income of the assessee.”

9. Assessing Officer rejected contention of the assessee and made addition as under:

<u>Nature of Addition/Disallowance</u>	<u>Amount(Rs.)</u>
Addition due to cash deposited in SBI	Rs.8550480.00
Addition due to cash deposited in ICICI Bank Ltd.	Rs.3985200.00
Addition due to cash deposited in Allahabad Bank	Rs.1200000.00

10. Before the Ld. CIT(A), the assessee made detailed submission to support the contention that assessee was carrying the business activity in the capacity of agent of Sh. Inder Singh and Sh. Betal Singh only. As far as the deposits in first two bank accounts is concerned, the Ld. CIT(A) made detailed analysis of the evidences available on record and concluded that the deposits claimed to have been related to liquid business of Sh. Inder Singh, the assessee was actually carrying on the business of liquor as Benami and Sh. Inder Singh was paid a small sum of Rs. 2.5 lakhs only. The Ld. CIT(A) on the basis of the information gathered by the assessing officer from the District Excise Officer, estimated the sales and expenses related to Sh Inder Singh's liquor business and determined net profit at Rs.7,29,289/-. Regarding the deposits claimed to have been related to Sh. Betal Singh, the Ld. CIT(A) directed the Assessing Officer to

ascertain the financial arrangement between the assessee and Sh. Betal singh and amount of the sales, purchase, payment of government duty etc and then bring the escaped income to tax after conducting necessary enquiries. Regarding the deposits of Rs. 12 lakhs in Allahabad Bank account, the Ld. CIT(A) rejected the contention of the assessee that these were received from petty construction contract. Thus, out of the total additions made by the Assessing Officer of Rs.1,37,35,680/-, the Ld. CIT(A) sustained addition of Rs.7,29,289/- and Rs. 12 lakh. The assessee is in appeal before the Tribunal against the addition sustained by the Ld. CIT(A). The appeal of the Revenue has already been dismissed on account of tax effect lower than limit prescribed for filing appeal to the Tribunal.

11. Before us, the Ld. Counsel of the assessee, relied on the submissions filed the Ld. CIT(A) and submitted that the Ld. CIT(A) was not correct in observing that the assessee was Benami of Sh. Inder Singh. He submitted that the assessee carried out activity only in the capacity of an agent of Sh. Inder Singh and thus the income which would have been assessed in the hands of Sh. Inder singh, has been wrongly assessed in the hand of the assessee. On the issue of addition of Rs. 12 lakh for cash deposits in Allahabad bank, the Ld. counsel submitted that the Ld. CIT(A) has not considered the evidence on record produced by the assessee in relation to construction activity including confirmations by three persons. He submitted that the valuation reports of their properties were also not considered by the lower

authorities. Accordingly, he submitted that addition in dispute sustained by the Ld. CIT(A), might be deleted.

12. The Ld. DR, on the other hand, submitted that actually in the case of the assessee the Ld. CIT(A) has computed the income without proper verification of the documents related to sales and expenditure in the case of Sh. Inder Singh but since the appeal of the revenue has been dismissed on account of low tax effect, the addition sustained by the Ld. CIT(A) might be upheld. On the issue of disallowance of Rs. 12 lakh also she relied on the finding of the Ld. CIT(A).

13. We have heard the rival submissions and perused the relevant material on record. In the facts of the case the Assessing Officer made addition for the cash found to be deposited in three savings bank accounts maintained by the assessee as unexplained. It was claimed by the assessee that first two bank accounts were utilized by him for depositing the sales receipt of the liquor vending business of Shri. Inder Singh and Sh. Betal Singh and in the third account, the assessee deposited receipts related to petty construction work carried out by him. The Ld. CIT(A) analyzed the information gathered by the Assessing Officer from District Excise Officer regarding the sales, excise duty paid etc related to the liquor vending business of Sh. Inder Singh. As regards the claim of deposits related to the liquor vending business of Sh. Betal Singh, the Ld. CIT(A) is of the view that his entire sales cannot be considered in the hands of the assessee, therefore, he directed the Assessing Officer to make addition after conducting necessary enquiries. On the

issue of Rs. 12 lakh deposit in Allahabad bank, he rejected the contention of the assessee of carrying out construction work. The Ld. CIT(A) The finding of the Ld. CIT(A) on the issue in dispute are reproduced as under:

“11. I have duly considered the facts and circumstances of the case. I have also perused the assessment records and on perusal of the same, certain things become quite clear. The first is that there is independent evidence brought on record by the AO through his correspondence with the District Excise authority which confirmed the fact that liquor shop in Pauri and in Bajro were allotted to Sh. Betal Singh and Sh. Inder Singh respectively and that both these liquor licensees filed a request before the District Excise Authority stating that for certain reasons they were not in a position to do this business and therefore, the assessee Sh. Deepak Singh may be allowed to do the business as their agent. Hence, it cannot be denied that the assessee was acting as an agent to these liquor licensees. However, there is a difference between the way in which the income from the two liquor licence seems to have been earned. While in the case of Sh. Betal Singh, it is observed that the total sales have been disclosed by him in the return filed by him and the taxes collected at source have been squared off against the taxes due on the returned income of Rs. 15,98,590/-, in the case of Sh. Inder Singh, no income tax return has been filed. This despite the fact that audited account of Sh. Inder Singh is found on the assessment records according to which he purportedly earned income of Rs. 5,35.024/-. Consequently, this would be considered to be case of tax evasion but it is quite clear from the statement of Sh. Inder Singh given before the AO on 19.03.2015 that the only contribution that Sh. Inder Singh made to this business was to apply for and be allotted a liquor licence. Subsequently, the activities including the purchase of liquor, deposit of excise duty, engagement of employees, payment of licence fees, maintenance of accounts, auditing of accounts i.e. everything was outsourced to the assessee, Sh. Deepak Singh and in turn for letting Sh. Deepak Singh run the shop, Sh. Inder Singh received a sum of Rs. 2.5 lacs which he used to clear debts etc. The statement of Sh. Inder Singh and the fact that he did not file any return to claim refund that was purportedly due to him would confirm the contention of the AO that in fact it was the assessee who was running the business. Therefore, the income earned from such business would have to be considered as the income of the assessee. However, in the case of Sh. Betal Singh, it is noted that the said assessee has owned up the transaction made on his behalf by filing the return and claiming the refund due to hm. In the circumstances,

while there could be an independent investigation into whether he had correctly disclosed his income in the said return or not, it is quite clear that the income on account of liquor trade run in his name was his and his alone.

12. *The assessee has deliberately avoided giving details of the transaction entered into on behalf of Sh. Betal Singh and Sir. Inder Singh. It is observed that the total credits in the 3 bank accounts of the assessee amounts to Rs. 1,37,35,680/-. It is also observed from the letter of the District Excise Officer that the total amount of licence fee, excise duty, liquor assessment fee and beer assessment fees, deposited by Sh. Inder Singh amounts to Rs. 71,62,482/- against declared sales of Rs. 1,27,43,732/-. It is also observed that the total credit in the bank account at SBI amounts to Rs. 85,50,480/-. From a perusal of the details obtained from the Excise authority, the audited accounts of Sh. Inder Singh and the statement of Sh. Inder Singh made before the AO it is clear that the credits in the SBI account represented the credit from the liquor business of the liquor shop at Bajro taken in the name of Sh. Inder Singh but actually run by Sh. Deepak Singh. It is further noticed that in the trading and P&L a/c for the year ending 31.03.2010 which has been audited purportedly on account of Sh. Inder Singh (but not signed by him), the claim on account of licence fee, excise duty and assessment fee is Rs. 72,37,444/- (which is Rs. 74,962/- more than what has been confirmed by the District Authorities). As it is quite clear that the said accounts were used for the liquor business of Sh. Inder Singh, (a perusal of the bank statement of SBI shows that a large majority of the deposits in the same have been made from Bajro which would seem to confirm this fact), the entire bank credit which corresponds to the sale receipts could obviously not constitute the income of the assessee. The expenses have to be allowed against the same. Now the expenses had not been claimed by the assessee because entire trade is a benami trade being run by him in the name of Sh. Inder Singh. Therefore, all the deposits towards purchase of licence fee, excise duty, assessment fee etc. are made in his name. However, since the sales from the said business are being considered as sales made by the assessee, the expenses on account of these sales have also to be allowed as expenses made on behalf of the assessee (albeit in another name). Thus, those expenses which are clearly verifiable such as purchase of licence fee, excise duty, assessment fee are to be allowed as deduction from the amount earned on sale. This amounts in total to Rs. 1,15,30,101/-. Of this, as already pointed out, there is an excess claim of Rs. 74,962/-, thus the assessee is allowed deduction of Rs. 1,14,55,139/- on account of expenses toward this benami liquor business. The remaining expenses have to be*

claimed and proved. The assessee has neither claimed the expenses nor proved them the total amount on account of such expenses claimed is Rs.6,78,607/-. As some expenses would definitely had been incurred by the assessee towards telephone expenses, electricity expenses, freight, wages, shop rent, labour charges etc, the entire amount of such expenses cannot be disallowed. Further, it is noted that an amount of Rs. 2.5 lacs has been paid to Sh. Inder Singh for lending his name and licence to the assessee which have not been accounted for in these expenses,, as claimed in the so called audited accounts of Sh. Inder Singh. Considering, these facts it is felt appropriate to allow 50% of the expenditure on this miscellaneous items (which amounts to Rs. 3,39,304/-) and also to allow further expenditure of Rs. 2.5 lacs being payment to Sh Inder Singh for the use of licence. Thus total expenditure to be allowed in respect of benarni liquor business is worked out at Rs. 1.20,44,443/- leaving the assessee with a net income of Rs.7,29,280/- from the liquor business conducted in the name of Sh. Inder Singh which needs to be brought to tax in his hands. As this income was hidden by the assessee from the department, the AO is directed to initiate the penalty proceedings u/s 271(1)(c) for concealment of income on account of this benami liquor trade. Consequently, the balance credit in the account at SBI which has been added back to the income of the assessee are deleted since much of the would have gone towards the expenses of liquor trade as detailed above.

13. This still leaves the money deposited in ICICI Bank & Allahabad Bank to be considered and also a mystery unsolved to how' the assessee conducted the business of Sh. Betal Singh because credits in his accounts are nowhere near the figures of sales and purchases as disclosed by Sh. Betal Singh in his income tax return and as confirmed by the District Excise Authority in their communication nor other terms and conditions of the assessee running the liquor business of Sh Betal Singh clear. This is because Sh. Betal Singh did not appear before the AO during the assessment proceedings and the affidavit filed by him before the AO does not contain any reference to the terms and conditions on account of which he was authorized to run liquor shop of Sh. Betal Singh at Pauri. It is quite obvious that Sh. Betal Singh would not have allowed the assessee Sh. Deepak Singh to run the liquor show without receiving any consideration from him whatsoever. Perusal of the income tax return of Sh. Beta! Singh shows that the total compensation paid by him to employees is Rs. 4.12,397/- which is considered to be inadequate compensation to the assessee for managing the liquor trade amounting to over Rs.8 crores. It is also seen from the investigation of the AO that the Allahabad Bank account at Pauri was also used for the liquor trade as

evidenced from the payment of Rs.2,00,662/- to M/s. Jagjeet Industries Ltd., a liquor supplier. Furthermore, the AO by recording the statement of Sh. Lalit Negi, Sh. Sharvan Kumar and Sh. Prakash Rawat has fairly established that the said persons were persons of no importance whatsoever. None of them earned more than Rs. 10,000 per month. None of them were taxpayer and infact none of them were the owners of the house which they had purportedly given contract to the assessee for, but one among the many owners of the said house which were ancestral in nature. This simply did not have the means to make the payments of Rs. 9.8 lacs. Rs. 3,15 lacs & Rs. 2.5 lacs respectively. In addition, the AO deputed his inspector to conduct field enquiry and the inspector reported back stating back than in the case of Sh. Lalit Negi. the repair and grout work on the roof were made 4-5 years back and neither was Sh. Lalit Negi the owner of the land nor the owner of the property because his father was one of the owner in the joint property. In the case of Sh. Prakash Rawat, the ITI reported that the property was jointly owned by 7 owners and work has been done 7-8 years back. Thus, the affidavit and statements made by these parties were not found to be corroborated by the facts on the ground. In the circumstances, the AO was perfectly justified in concluding that the amount deposited in the Allahabad Bank was completely unexplained and rejecting the explanation of the assessee that it was on account of civil works contract. It is further observed that in the case of Sh. Lalit Negi. was himself a small contractor so he should not have any further occasion to give the contract to the assessee. Furthermore, the amount stated to be given by him (Rs. 2.5 lacs) in his statement varied from the amount given by him (Rs. 3.35 lacs) as reported by the assessee. In the circumstances, the decision of the AO to consider the entire amount of deposit in the Allahabad Bank as unexplained cannot be faulted given the fact that the assessee had neither accounted for the receipts from Sh. Betal Singh on account of running of this business, has actually used Allahabad Bank for liquor trade and has been unable to prove that the said account contained the proceeds of petty contract business. In the circumstances, it is my belief that the decision of the AO to bring the amount deposit to tax as unexplained investment cannot be faulted. The addition of Rs. 12 lacs made in this regard is therefore upheld.

14. It is also seen that the assessee has not furnished any explanation with regard to the amounts deposited in he ICICI Bank account. However, it is seen that the AO has made enquiries with the bank to determine that the demand drafts issued from this bank account were issued in favour of District Excise Officer, Pauri and some of the credits in this account

represent the refund of the cancelled DDs. Even the cash deposits are seen to be made at Pauri. Thus it becomes apparent that this account was being used by the assessee for liquor trade of Betal Singh from the Pauri Liquor Shop. As Shri Betal Singh has considered the entire sales in the computation of his returned income, there does not appear to be any reason to tax the deposits in this account in the hands of the assessee at this stage. Hence, the addition on this account is uncalled for. However, as already observed, the assessee has not disclosed the financial arrangements between him and Shri Betal Singh and it cannot be expected that the shop was run without any financial benefit to the assessee. The AO has also drawn reference to the fact that the assessee has much explaining to do on account of how he conducted the business of Sh. Betal Singh because the amount of sales and the full extent of purchase/payments on Government Duty as ascertained from the return of Sh. Betal Singh, has not been conducted through this account. It is therefore quite clear that the income arising to the assessee from the conduct of liquor business on behalf of Betal Singh has escaped assessment and needs to be brought to tax. The AO may therefore, bring this escaped income to tax. after conducting necessary enquires in the matter.”

14. In our opinion, the finding of the Ld. CIT(A) on the issue in dispute are justified. The Ld. CIT(A) has computed the profit from the liquor vending business of Shri Inder Singh on the basis of the figure of sales, excise duty paid etc gathered by the Assessing Officer from the office of the District Excise Officer. Moreover, in the statement, Sh. Inder Singh clearly admitted that actual business was being run by the assessee and he was merely acting as Benami of the assessee. The assessee has failed to rebut the statement of Sh. Inder Singh. In view of the detailed analysis of the statements and the evidence on record, the action of the Ld. CIT(A) in sustaining the addition of Rs.7,29,289/- is just and reasonable. Accordingly, we uphold the same. The grounds

of the assessee related to the issue in dispute are accordingly dismissed.

15. On the issue of addition of Rs. 12.00 Lacs against cash deposit in Allahabad bank, the assessee has merely submitted that he carried out construction for the three persons, namely, Sh. Lalit Negi, Sh. Sharwan Kumar and Sh. Prakash Rawat, but he failed to substantiate the documentary evidence in support of construction activity claimed by him. The Ld. CIT(A) has noted that Sh. Lalit Negi, himself was a small contractor and thus there would not have been further occasion for him to give some contact to the assessee. The affidavits and statements given by these parties were not found by the Ld. CIT(A) to be correlated with the documentary evidence. In view of the above, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute. The grounds of the appeal related to the issue in dispute are accordingly dismissed.

16. In the result, the appeal bearing ITA No. 2839/Del/2017 of the assessee is dismissed.

17. In ITA No. 6852/Del/2017 for AY 2012-13, the cash deposits of Rs.21,53,025/- have been found in bank accounts of the assessee, which he claimed as received from petty civil contract work and in the return of income filed in response to notice under section 148 of the Act, the assessee declared profit of Rs.2,02,047/- under the presumptive assessment scheme of section 44A.D. The Assessing Officer as well as the Ld. CIT(A) rejected the contention of the assessee of deposits belonging to construction activity.

During the year, the assessee made claims of construction carried out for three persons. Similar claim was made by the assessee in assessment year 2010-11 and the Ld. CIT(A) rejected the said claim, which we have upheld in preceding paras. As far as the claim of receipt from construction activity, which is issue in dispute in the present appeal , the facts and circumstances of the year under consideration are identical to the facts and circumstances of the assessment year 2010-11, thus, following our finding in assessment year 2010-11 in ITA No. 2839/Del/17, we uphold the finding of the Ld. CIT(A) on the issue in dispute and dismiss the appeal of the assessee.

18. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 21st December, 2018.

Sd/-

[H.S. SIDHU]

JUDICIAL MEMBER

Dated: 21st December, 2018.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

[O.P. KANT]

ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi